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Supreme Court, U.S.
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CASE NO. 93-747

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

BRUCE BALDWIN MOHS,

Petitioner,

v.

CENTURY 21 REAL ESTATE CORPORATION, A wholly-owned subsidiary of METROPOLITAN LIFE INSURANCE COMPANY, TRANS WORLD CORPORATION, TW HOLDINGS, INC., and TW SERVICES, INC.

Respondents.

RESPONDENTS TRANS WORLD CORPORATION, TW HOLDINGS, INC., AND TW SERVICES, INC.'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JOHN H. SCHMID, JR.
Counsel of Record
for Respondents
Trans World Corporation,
TW Holdings, Inc., and
TW Services, Inc.
SABIN S. PETERSON
On Brief
AXLEY BRYNELSON
2 East Mifflin Street
Post Office Box 1767
Madison, WI 53701-1767
(608) 257-5661

BEST AVAILABLE COPY

QUESTION PRESENTED

I. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE DISTRICT COURT'S OPINION DISMISSING PETITIONER'S CLAIM UNDER THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION AND CLAIMS SEEKING REVIEW OF PRIOR WISCONSIN STATE COURT ACTIONS REGARDING THE USE OF THE "CENTURY 21" TRADENAME?

PARTIES

Petitioner Bruce Baldwin Mohs was the plaintiff in the proceedings in the District Court and the appellant in the proceedings in the Court of Appeals.

Respondents Trans World Corporation, TW Holdings, Inc. and TW Services, Inc. were defendants in the proceedings before the District Court and appellees in the proceedings before the Court of Appeals. None of these Respondents have parent or subsidiary companies required to be disclosed under Rule 29.1. Trans World Corporation is no longer an existing corporate entity and has not been an existing corporate entity throughout the life of these proceedings.

Respondents Century 21 Real Estate Corporation and Metropolitan Life Insurance Company were defendants in the proceedings before the District Court and appellees in the proceedings before the Court of Appeals.

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Table of Contents and Table of Authorities are not required because of the brief length, pursuant to Supreme Court Rule 24.1(c).

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OPINIONS BELOW

Petitioner's statement of the opinions below is not correct. The district court's opinions, dated April 11, 1991, and November 4, 1991, the district court's Judgment, the court of

appeals' Order dated April 30, 1993, and the court of appeals' Judgment are in the Appendix. These opinions are not reported in an official reporter.

JURISDICTION

The United States Supreme Court's jurisdiction of this case is based upon 28 U.S.C. §§ 1331 and 1254. Petitioner timely filed his Petition for a Writ of Certiorari as required by Supreme Court Rule 13.1.

CONSTITUTIONAL PROVISIONS/STATUTES INVOLVED

The present Respondents agree with the statement of the constitutional provisions involved set forth in the Petition for a Writ of Certiorari to the extent that it lists the First Amendment to the United States Constitution. The remaining constitutional and statutory provisions in the Petition for a Writ of Certiorari are not involved.

STATEMENT OF THE CASE

Petitioner commenced an action against Respondents alleging violations of his rights under the First Amendment to the United States Constitution, the United States Securities Laws, and Federal or State Trademark Laws. In April, 1991, the district court dismissed the plaintiff's complaint against Trans World Corporation, TW Holdings, Inc. and TW Services, Inc. pursuant to Federal Rule of Civil Procedure 12(b). See App. 1-13. Respondents Century 21 Real Estate Corporation and Metropolitan Life Insurance Company later filed a motion

for summary judgment pursuant to Federal Rule of Civil Procedure 56, which the district court granted. See App. 14-27. Judgment was entered in the district court on November 5, 1991. See App. 28. Appeal was taken to the United States Court of Appeals, which affirmed the district court. See App. 29-33.

The exact nature of the petitioner's claims is unclear. They apparently arise out of a conflict in the 1970s involving the use of the tradename "Century 21" in Wisconsin. In April of 1977, respondent Century 21 Real Estate Corporation commenced a Wisconsin state court action against the petitioner alleging trademark infringement and unfair competition. That action resulted in a jury verdict awarding respondent Century 21 Real Estate Corporation compensatory and punitive damages against the petitioner for his use of the Century 21 name.

In 1985, Trans World Corporation sold its interest in Century 21 Real Estate Corporation to respondent Metropolitan Life Insurance Company. Respondent Trans World Corporation has had no involvement with the petitioner in any respect, to the best of its knowledge. TW Holdings, Inc. and TW Services, Inc. have had no involvement with the petitioner to the best of their knowledge.

SUMMARY OF ARGUMENT

Petitioner apparently alleges claims under the First Amendment of the United States Constitution, the United States Securities Laws, and either Federal or State Trademark Laws. The Petition for a Writ of Certiorari does not apparently seek review of the dismissal of petitioner's claims under the United States Securities Laws. As a result, the present respondents address only the claims under the First Amendment of the

United States Constitution and the Federal or State Trademark Laws.

On the First Amendment claim, the district court concluded that Trans World Corporation had not engaged in governmental action prohibited under the First Amendment. On that basis, the First Amendment claims against the present respondents were dismissed and the court of appeals properly affirmed on that basis.

On the claims under Federal or State Trademark Laws, the district court noted that petitioner was seeking review of prior Wisconsin state court decisions. The district court also held that the petitioner did not state sufficient facts to allege a claim under any trademark laws. The court of appeals properly affirmed the dismissal of any potential trademark claim raised by the petitioner.

ARGUMENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

I. PETITIONER FAILS TO SHOW GOVERNMENTAL ACTION WHICH WOULD ENTITLE HIM TO MAINTAIN AN ACTION AGAINST THE PRESENT RESPONDENTS UNDER THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION.

Petitioner's First Amendment claim apparently arises out of his inability to speak at a Trans World Corporation shareholder meeting in New York, New York, which addressed the sale of Century 21 Real Estate Corporation to Metropolitan Life Insurance Company. Nothing in the complaint suggests that governmental participation was involved in petitioner's inability to speak at that meeting. The First Amendment is a limitation

on governmental action that abridges speech and does not apply to limits imposed on speech by strictly private actors. Air Wisconsin Pilots Protection Committee v. Sanderson, 909 F.2d 213 (7th Cir. 1990), cert. den'd, 111 S.Ct. 958 (1991). Because there were no allegations of governmental participation in any alleged abridgment of the petitioner's speech rights, the First Amendment claim was properly dismissed by the district court and the dismissal was properly affirmed by the court of appeals.

II. THE PETITIONER MAY NOT RELITIGATE STATE COURT DECISIONS REGARDING APPLICATION OF THE FEDERAL OR STATE TRADEMARK LAWS IN THE COURTS OF THE UNITED STATES.

The heart of petitioner's case is an attempt to have his lengthy litigation in the State of Wisconsin courts reviewed by the courts of the United States. This characterization of petitioner's claims is exemplified by the first sentence of the petitioner's statement of the opinions below: "The opinions below are in chronological order in this 17+ year long case." (Petition for a Writ of Certiorari at 2). The district court lacks subject matter jurisdiction to review the various decisions of the courts of the State of Wisconsin which prohibited petitioner from using the Century 21 name. See, e.g., District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983). There was no error in the decisions of the district court or the court of appeals.

CONCLUSION

The United States Supreme Court should deny the Petition for a Writ of Certiorari because petitioner's complaint was dismissed on settled law. No compelling issues in this case justify the Court's acceptance of this case for review. The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JOHN H. SCHMID, JR.
Counsel of Record
for Respondents
Trans World Corporation,
TW Holdings, Inc., and
TW Services, Inc.
SABIN S. PETERSON
On Brief
AXLEY BRYNELSON
2 East Mifflin Street
Post Office Box 1767
Madison, WI 53701-1767
(608) 257-5661

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

BRUCE BALDWIN MOHS,

Plaintiff,

v.

OPINION and ORDER
91-C-026-C

TRANS WORLD CORPORATION,
TW HOLDINGS, successor to
the above, SWT DIVISION OF
CONISTAN PARTNERS involved
in the transition phases from TRANS WORLD CORP. to
its present successor entities,
METROPOLITAN LIFE INSURANCE CO., and
CENTURY 21 REAL ESTATE CORP.,

Defendants.

This is an action for monetary and injunctive relief for violations of the securities laws, the First Amendment, and trademark laws, stemming from the use of the name Century 21 in Wisconsin and litigation instigated in Wisconsin state courts by defendant Century 21 Real Estate Corporation. Jurisdiction is asserted under 28 U.S.C. §§1332, 1338 and 15 U.S.C. §1121.

Defendants Trans World Corporation, TW Holdings, and SWT Division of Conistan Partners have moved for dismissal of plaintiff's complaint pursuant to Fed. R. Civ. P. 12(b) for failure to state a claim, for lack of personal jurisdiction, and for insufficient service of process. Because I agree with the moving defendants that plaintiff has failed to state a claim against them

for which relief may be granted, I do not reach the other grounds for dismissal.

For the sole purpose of deciding the motion to dismiss, I take as true the following factual allegations of the complaint.

Allegations of Fact

Plaintiff is an adult citizen and resident of Fitchburg, Wisconsin. Defendant Trans World Corporation is a publicly held corporation chartered in Delaware and headquartered in New York. Defendants TW Holdings and TW Services, successor corporations to Trans World Corporation, are headquartered in New Jersey and South Carolina respectively.[1] Defendants TW Holdings, TW Services, and Trans World Corporation are all registered as corporations in Delaware. Century 21 Real Estate Corporation is a wholly owned subsidiary of Metropolitan Life Insurance Corporation, and was at certain times relevant to this action a wholly owned subsidiary of Trans World Corporation.[2]

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[1] Plaintiff refers to "TW Services" as a successor corporation to Trans World Corporation. However, he has not listed this entity as a defendant in the caption to his complaint or alleged any particular liability on its part. Therefore, I will not construe plaintiff's complaint as attempting to state a claim against TW Services.

Plaintiff does not allege any facts regarding the location or incorporation of "SWT Division of Conistan Corporation," listed in the caption as a defendant.

[2] Plaintiff's complaint does not clarify the specific type of business in which each defendant is engaged, or explain the relationship among defendants Trans World Corporation, TW

On October 30, 1985 at a meeting at the World Trade Center in New York, defendants offered a prospectus to stockholders of record, former stockholders, and all present. The purpose of this meeting was to vote on the proposed sale of the Century 21 franchise system to Metropolitan Life Insurance Company for $251,200,000.00. At the time, plaintiff was a former stockholder of Trans World Corporation. Plaintiff did not contemplate buying any stock at this meeting.

In March 1973, plaintiff had filed a statement of adoption of the name "Century 21" with the Wisconsin Secretary of State. Plaintiff planned to use the name for a partnership that would develop a "one-stop home shopping" facility offering building supplies and financial services.

Plaintiff used the Century 21 name in Wisconsin over three and one-half years ahead of defendant Century 21 Real Estate corporation, which filed a statement of adoption with the Wisconsin Secretary of State in December 1976. Plaintiff adopted the name over one half year before Century 21's federal registration of its name. The Wisconsin-based Century 21 company never had a federal registration. Both firms started at about the same time, unknown to the other.

Trans World Corporation was not authorized to do business in Wisconsin as of September 1981, or in 1985 when it offered the prospectus on Century 21.

In the prospectus offered at the October meeting, Trans World Corporation omitted the material fact that Century 21 was engaged in litigation over the use of the "Century 21" name in Wisconsin.

Holdings, and SWT Division of Conistan Partners.

The franchise system of Century 21 and its trade name are the principal assets of Century 21 Real Estate Corporation. The value of the franchise system's name to Century 21 was 90% of the total value of the corporation. Therefore, the omission of the ongoing litigation concerning ownership of the Century 21 name violated instructions in the securities regulations specifying that a company must include in its registration statements and other reports any nonroutine ongoing litigation that affects over 10% of the value of the company.

The omission of information about this litigation misled the stockholders and others at the meeting into thinking that all was well with Trans World Corporation's wholly owned subsidiary, Century 21 Real Estate Corporation. The very existence of the company was in jeopardy, in light of the fact that the Wisconsin Court of Appeals had rendered a decision in favor of plaintiff on May 1, 1986.[3] Had Trans World Corporation

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[3] Plaintiff's exhibits include a January 1986 memorandum from a Dane County circuit court judge, in which the judge found that plaintiff's publication of his autobiography and other activities rendered plaintiff in contempt of an earlier injunction prohibiting him from interfering with defendant Century 21's service and trade mark.

In the court of appeals' decision to which plaintiff refers above, the court reversed a prior partial grant of summary judgment to then-plaintiff Century 21 on the issue of then-defendant Mohs's abandonment of the trade name under Wisconsin law. The court held further that resolution of this issue had been central to the determination of the subsequently tried unfair competition question, which had resulted in a decision unfavorable to Mohs. It ordered a new trial on all issues. The Wisconsin supreme court declined to review this

included information about the ongoing litigation in the prospectus, stockholders and other parties could have made an honest and educated decision on the sale of the franchise system. Trans World Corporation abused its corporate powers in the meeting held on October 30, 1985. Plaintiff was not allowed to tell the over 300 stockholders present at the meeting the truth about the omissions in the prospectus.

Prior to the October 30 meeting, the legal departments of Metropolitan Life and Trans World were in collusion because plaintiff had warned Metropolitan Life directors to word the prospectus fairly. As a result of the collusion, the meeting was not fair to other bidders for Century 21 because Metropolitan Life already owned a substantial interest in Trans World Corporation.

In January 1986, a Dane County Circuit Court judge banned plaintiff's book, "The Amazing Mr. Mohs," because plaintiff described in chapter 21 the status of the Century 21 trade name litigation to the date of publication in December 1984. Plaintiff had to shelve $60,000 worth of books which were selling well when they were banned. Plaintiff has suffered numerous financial setbacks since he formed a partnership with the same name as the Century 21 Real Estate Corporation, and since that company instituted litigation against him. Plaintiff

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decision on July 28, 1986. The exact outcome of the new trial is not clear from plaintiff's submissions. I infer from the complaint that it was not favorable to plaintiff, as the gist of his complaint before this court is that he is dissatisfied with the "lack of protection" he has received in state courts.

The court of appeals' decision to which plaintiff refers was issued after the October 1985 meeting.

filed for bankruptcy. The lower state courts in Wisconsin have not protected plaintiff.

In 1977, Bayard Michael, counsel for Century 21 Real Estate Corporation, wrote a letter to the chief attorney for the franchise investment division of the Office of the Commissioner of Securities in Washington, D.C., in which he concluded that the services for which plaintiff had registered his trademark would not conflict with defendant Century 21's real estate brokerage business. This letter indicates that the litigation subsequently instigated against plaintiff was frivolous.

OPINION

Plaintiff's first contention is that Trans World Corporation violated federal securities law when it offered a prospectus that omitted the material fact that Century 21 Real Estate Corporation was involved in litigation with plaintiff over the use of its trade name, which prevented shareholders and prospective purchasers from making educated investment decisions.

Section 12(2) of the Securities Act of 1933, 15 U.S.C. §77(l)(2), provides for the imposition of civil liability in cases of an omission of material fact in a prospectus related to the offer or sale of securities. Specifically, it provides that any person who:

> (2) offers or sells a security . . . by means of a prospectus or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make

> the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission) . . .
>
> shall be liable to the person purchasing such security from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such security with interest thereon . . . [emphasis added].

Defendants point out, correctly, that in order to maintain an action for fraud in the offering of a prospectus under this statute the plaintiff must actually have bought the security. See Kellman v. ICS, Inc., 447 F.2d 1305, 1308 (6th Cir. 1971); Roger v. Lehman Bros. Kuhn Loeb, Inc., 604 F.Supp. 222 (S.D. Ohio 1984) (only purchasers of securities have standing to sue for violations of §12 of the 1933 Act). The anti-fraud provisions of the Securities Act are intended to protect those who make decisions regarding the securities in question. Cf. Norris v. Wirtz, 719 F.2d 256, 259-60 (7th Cir. 1983), cert. denied, 466 U.S. 929 (1984), overruled on other grounds, Short v. Belleville Shoe Manufacturing Co., 908 F.2d 1385, 1387 (7th Cir. 1990) (discussing purpose of Rule 10b-5 of the Securities and Exchange Act of 1934). They do not provide a remedy for a non-purchaser or seller like plaintiff who has not been injured by a false statement or omission.

Even if plaintiff had purchased Century 21 securities in reliance on the prospectus, his claim would be barred by the applicable statute of limitations. Section 13 of the Securities Act of 1933 provides that no action shall be brought to enforce any liability under section 12(2) unless brought within one year after

the discovery of the omission, or after such discovery should have been made by the exercise of reasonable diligence, and under no circumstances more than three years after the sale. 15 U.S.C. §77(m); Short, 908 F.2d at 1392. Plaintiff's complaint establishes that he knew in 1985 that the prospectus omitted information about the pending litigation. The three-year limit for instigating litigation under this section expired in 1988. Plaintiff's claim based on a material omission of fact in the prospectus will be dismissed.

Plaintiff's second contention is that his First Amendment rights were abridged because he was prevented from speaking at the October 1985 meeting in New York. The First Amendment is a limitation on governmental action that abridges speech. It does not apply to limits imposed on speech by strictly private actors. Air Wisconsin Pilots Protection Committee v. Sanderson, 909 F.2d 213 (7th Cir. 1990), cert. denied, 111 S.Ct. 958 (1991) (plaintiff's claim of free speech violation by private entity Air Line Pilots Association derived not from First Amendment but from Landrum-Griffin Act). Plaintiff makes no allegation that there was any governmental participation at the meeting he attended or in imposing the restriction on his speech. Therefore, his allegations fail to state a claim that defendants violated his First Amendment right to speak.

As best I can tell, plaintiff's third contention is that defendant Trans World Corporation's conduct at the October 1985 meeting constituted an "abuse of corporate power" warranting the revocation of its corporate charter under the laws of Delaware. Plaintiff points to Article IX, §1 of the constitution of the State of Delaware in support of this argument:

> No corporation shall hereafter be created, amended, renewed revived by special act, but only by or under general law, nor shall any

> existing corporate charter be amended, renewed or revived by special act, but only by or under general law . . . The general Assembly shall, by general law, provide for the revocation or forfeiture of the charters of all corporations for the abuse or non-user of their corporate powers . . .

While plaintiff's concern for the ethical conduct of corporate meetings is admirable, he does not allege any facts that would explain how any such abuse affected or injured his interests. Even if he had, this court would not be able to grant plaintiff any relief with regard to this claim. Article IX, §1 specifies that if revocation of a corporate charter is necessary, "[a]ny proceeding for such revocation or forfeiture, shall be taken by the Attorney General, as may be provided by law." Plaintiff's allegations concerning defendants' liability under Delaware law should be directed to the attorney general of that state.

Plaintiff's broad allegations of collusion between Trans World Corporation and Metropolitan Life are too vague to establish the basis for any claim that these defendants violated any particular right of plaintiff, or violated a particular law that resulted in harm to plaintiff.

In his complaint, plaintiff details numerous financial and personal indignities he asserts he has suffered since defendant Century 21 brought suit against him. As relief for these injuries, plaintiff requests, among other things, compensation for losses incurred through litigation and lost business opportunities; an injunction prohibiting Century 21 from infringing on his trade name; and reinstatement of his rights to the Century 21 name and to sell his book. Plaintiff also seeks novel forms of relief such as compensation to the state courts for their expenses, an oral apology from defendants in front of the state legislature,

and a determination by this court that the lawsuits instigated against him were frivolous. Separately or together, plaintiff's allegations fail to state a claim against the moving defendants.

First, the link to the moving defendants contained in plaintiff's allegations is extremely tenuous. Plaintiff does not allege that any of the moving defendants were parties to the state court litigation. In his brief, he asserts only that Trans World Corporation owned Century 21 until the 1985 sale to Metropolitan Life, and that an attorney for Trans World was aware that Century 21 was involved in litigation with plaintiff. These facts do not even suggest that any of the moving defendants were connected to the state court litigation and therefore responsible for plaintiff's suffering.

Second, even if defendants had been involved in the prior litigation, scrutiny of plaintiff's allegations and requests for relief lead to the conclusion that plaintiff is asking this court to revisit and modify judgments of the state courts with which plaintiff is dissatisfied.[4] This court cannot accommodate such a request.

The jurisdiction of federal district courts is limited to the determination of questions arising under the United States Constitution and under federal law. It has been held repeatedly that absent a constitutional infirmity in the judicial process

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[4] As noted earlier, although plaintiff does not provide any allegations about the final outcome of the state litigation, I can infer from the totality of his allegations that at some point after the court of appeals remanded the case, plaintiff received an unfavorable decision. I am unable to determine from the present record whether the issues were subsequently confined to state law, and whether plaintiff exercised his right to appeal an adverse judgment.

through which a plaintiff attempts to vindicate his rights, federal district courts do not have authority to review the outcome of claims brought and decided in state court. This rule applies even when the plaintiff characterizes his claim as a new injury or one of constitutional dimensions. See, e.g., Jentges v. Milwaukee County Circuit Court, 733 F.2d 1238, 1244 (7th Cir. 1984) (federal court will not set aside conviction in guise of due process review simply because it might disagree with the state court's interpretation of state law) (citing U.S. ex rel Burnett v. People of the State of Illinois, 619 F.2d 668, 671 (7th Cir.), cert. denied, 449 U.S. 880 (1980)); Hale v. Harney, 786 F.2d 688, 691 (5th Cir. 1986) (litigant challenging trial court's ruling in divorce case cannot style suit as civil rights claim to obtain review in federal court if "in essence" court is being asked to review state decision) (citing District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983)); Reynolds v. Georgia, 640 F.2d 702 (11th Cir. 1981) (despite contention that state court decision resulted in new injury, where plaintiff sought to have federal court set aside state court judgment as void, to obtain a declaration of her rights to the land in question, and enjoin defendants from interfering with her rights to the land, facts and complaint showed that plaintiff sought to review prior proceeding, which amounted to an exercise of appellate jurisdiction district court did not possess); Town of Hopkins, South Carolina v. Cobb, 466 F.Supp. 1212 (D.S.C. 1979) (plaintiff's §1983 suit was "veiled request for appellate review of the state court action"). Cf. Ceramie v. Tucker, 493 F.2d 586 (5th Cir.), cert. denied, 419 U.S. 868 (1974) (federal court's review of validity of decision of appellate courts of Louisiana in negligence case barred by doctrine of res judicata and absence of constitutional infirmity in Louisiana's system of appellate review).

Plaintiff does not allege any constitutional defect in the state court proceedings themselves. Although he has requested

varied forms of relief, the gist of his complaint is that plaintiff wants this court to render a different judgment from the one he received in state court regarding the use and alleged infringement of the trade name "Century 21." This court cannot "modify, review or annul the orders and judgments" of the state courts. Hopkins, 466 F.Supp. at 1214. The proper manner of obtaining such review is through the appellate courts of this state and by a writ of certiorari to the Supreme Court of the United States. Id. at 1214 (citing Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923)).

In addition to requesting review of the state court judgment, plaintiff may be attempting to make out a claim that defendants violated his rights under federal law, because he has asserted that jurisdiction arises under 15 U.S.C. §1121 and 28 U.S.C. §1338, which give district courts original jurisdiction over actions under the federal trademark laws. However, if that is plaintiff's intention, his allegations still fail to state a claim against the moving defendants. Plaintiff cites to no applicable federal law; he does not detail the relationship between any of the defendants and Century 21; and he does not assert any facts relative to any trademark issues beyond asserting that he registered the Century 21 name first in Wisconsin. The facts in the complaint are too skimpy to state any sort of claim that the moving defendants violated a right of plaintiff under federal law to use the trade name Century 21.

Plaintiff should be aware that there are considerable obstacles at this juncture to his maintaining a successful federal court suit against any of the defendants. An action under federal or state law may be barred by the applicable statutes of limitations. Also, depending on the finality of the prior judgments, plaintiff may be collaterally estopped from relitigating issues that were already litigated and decided in the state court action involving defendant Century 21. See, e.g., Whitley v.

Seibel, 676 F.2d 245, 248 & n.1 (7th Cir.), cert. denied, 459 U.S. 942 (1982); Speaker Sortation Systems v. United States Postal Service, 568 F.2d 46 (7th Cir. 1978) (collateral estoppel may be invoked by new defendants against plaintiff as long as plaintiff has had full and fair opportunity to litigate the issue in state court).

ORDER

IT IS ORDERED that the motion to dismiss of defendants Trans World Corporation, TW Holdings, and SWT Division of Conistan Partners is GRANTED. Plaintiff's complaint is DISMISSED with respect to these defendants.

Entered this 11th day of April, 1991.

BY THE COURT:

/s/
BARBARA B. CRABB
District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

BRUCE BALDWIN MOHS,

Plaintiff,

ORDER

v.

91-C-26-C

METROPOLITAN
LIFE INSURANCE CO., and CENTURY 21
REAL ESTATE CORP.,

Defendants.

This is an action for monetary and injunctive relief arising from defendant Century 21 Real Estate Corporation's (Century 21) use of the trade name "Century 21." In addition to state tort claims, plaintiff asserts violations of the First Amendment and securities and trademark laws. Jurisdiction is asserted under 28 U.S.C. §§1332, 1338, and 15 U.S.C. §1121.

Plaintiff has filed a motion to add Judge Robert R. Pekowksy and Michael J. Wyngaard as defendants and a document entitled "New Evidence for Court & Request for Injunctive Relief," both of which I will construe as motions to

amend plaintiff's complaint.[1] Defendants oppose both motions on the grounds that they are untimely and meritless.

Defendants Century 21 and Metropolitan Life have moved for summary judgment on the grounds that jurisdiction is lacking; that plaintiff fails to state a claim upon which relief can be granted; that the claims are precluded by res judicata and collateral estoppel; and that plaintiff lacks standing because he did not schedule any of his legal claims as assets when he filed for bankruptcy. Since defendants have addressed the merits of both the original complaint and proposed amendments, I will treat defendants' motion for summary judgment as a motion directed to both the original and amended complaint. I conclude that summary judgment for defendants is proper for reasons that are more fully set out below.

Plaintiff has submitted a document entitled "Acknowledgment and Admonishment," in which he acknowledges the receipt of the materials accompanying defendants' motion for summary judgment and requests that Century 21 be enjoined from distributing Century 21 advertisements on the premises of the Ivy Inn. Because plaintiff does not have standing to seek this injunction, I will deny his request.

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[1] Plaintiff has not submitted an amended complaint that entirely replaces his original complaint as required by this court; however, in the interest of efficiency I will consider the original complaint together with the allegations contained in the motions to amend the complaint.

FACTS[2]

Plaintiff resides in Wisconsin and is a business person and inventor. Defendant Century 21 is a real estate corporation with its principal office in California. It is a wholly owned subsidiary of Metropolitan Life. Defendant Metropolitan Life is a mutual insurance company with its principal office in New York.

In 1973 plaintiff recorded the trade name "Century 21" with the Secretary of State for Wisconsin for use in advertising merchandise for residential and commercial buildings. In 1977, defendant Century 21 sought permission to provide real estate brokerage services in Wisconsin, but plaintiff objected on the ground that he owned the rights to use the Century 21 trade name.

Counsel for Century 21 wrote the Wisconsin Securities Commissioner on March 24, 1977, stating that plaintiff had never operated a business under the name Century 21 and that plaintiff's use of the name for building supplies did not conflict with Century 21's real estate brokerage business. At or about the time the letter was written, plaintiff placed an advertisement

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[2] Plaintiff has not submitted Proposed Findings of Fact and Conclusions of Law, and he has not challenged any of defendants' proposed findings of fact, despite the detailed instructions that were sent to him with the order dated June 19, 1991. As a result, I have found as undisputed facts defendants' proposed findings of fact (which are amply supported in the record). Plaintiff submitted an untimely response in opposition to defendants' motion for summary judgment which I will consider despite its untimeliness since plaintiff is proceeding pro se.

in a local paper which stated "Exclusive in Wisconsin - Century 21 - Your Full Line Real Estate Service - Commercial - Industrial - Residential - Shopping Malls and Arcades - a Livesey-Mohs Real Estate Service."

On April 15, 1977, Century 21 filed a complaint in Dane County Circuit Court alleging trademark infringement and unfair competition against plaintiff and the Livesey-Mohs partnership. Plaintiff counterclaimed, seeking to enjoin Century 21 from using the trade name "Century 21" and also seeking monetary damages and declaratory relief based on Century 21's alleged trademark infringement.

In a partial final judgment on September 23, 1982, Judge Pekowsky canceled plaintiff's and the Livesey-Mohs Partnership's name registration of the trade name Century 21, enjoined them from using the name, and dismissed their counterclaims. Plaintiff attempted unsuccessfully to appeal the partial summary judgment, and then filed an amended answer, affirmative defenses and counterclaims, alleging again that he had superior rights to the trade name Century 21. On plaintiff's motion, the court reconsidered the partial summary judgment it had entered and again granted partial summary judgment in favor of Century 21. A jury returned a verdict against plaintiff on the remaining issues, and Judge Pekowsky entered a final judgment on May 18, 1984, enjoining plaintiff from using the Century 21 name or injuring Century 21's business reputation, ordering him to produce all the materials bearing the name Century 21, and entering a damage award against him of $124,501.

In 1985, Transworld Corporation, the owner of Century 21, sold Century 21 to Metropolitan Life. In August 1985, Century 21 became aware that plaintiff was distributing a book in which he described his perception of the litigation involving the Century 21 trade name, and also that plaintiff had

written letters to members of the Board of Directors of Metropolitan Life before its purchase of Century 21, claiming that he owned the trade name Century 21. Based on these developments, Judge Pekowksy entered a memorandum decision on January 9, 1986 finding plaintiff in contempt of the 1984 court order, but no contempt order was entered and plaintiff did not appeal the decision.

On May 1, 1986, the Wisconsin Court of Appeals reversed the trial court's partial summary judgment, reversed the jury verdict and remanded the case for a new trial on all the issues. In the second trial, the jury returned a special verdict in favor of Century 21 and awarded compensatory and punitive damages. The relevant jury findings were that plaintiff had not established a protectible right to use the Century 21 trade name; did not abandon the trade name; used the Century 21 trade name in a manner likely to cause confusion and with the intent to deceive the public; intentionally interfered with Century 21's expected business relationship; and did not act with malice in publishing statements that cast doubt on the validity of Century 21's trademark. On February 9, 1988, the Dane County Circuit Court entered an amended judgment on the verdict, awarding declaratory and injunctive relief, $4,000.00 in damages and $15,000.00 in punitive damages against plaintiff. Plaintiff attempted unsuccessfully to enlarge his time to appeal, and the court entered an order declaring the amended judgment final and nonappealable.

On August 5, 1988, plaintiff filed schedules of his financial affairs in the Bankruptcy Court for the Western District of Wisconsin. During the bankruptcy proceedings, plaintiff attempted unsuccessfully to invalidate a mortgage held by the law firm Wyngaard & Wilson in security for the payment of plaintiff's legal fees incurred during his litigation with Century 21. In those proceedings plaintiff argued that the

mortgage should be invalidated because Wyngaard & Wilson failed to disclose that it was representing Century 21 affiliates at the same time it represented plaintiff in his case against Century 21. The bankruptcy court rejected plaintiff's theory,[3] approved plaintiff's amended disclosure statements on February 10, 1989, and entered an order of discharge on October 5, 1989. The schedules and disclosure statements do not list any of the claims that plaintiff asserts in this action. Plaintiff also filed a grievance with the Board of Professional Responsibility of the Supreme Court of Wisconsin concerning Wilson & Wyngaard's alleged conflict of interest.[4]

At some point following the bankruptcy court's determination, plaintiff initiated an action in state court against Paul Soglin, a former lawyer at Wyngaard & Wilson, seeking to invalidate Wyngaard & Wilson's mortgage on the ground that the firm provided "disloyal representation" because it failed to disclose a conflict of interest.[5] Plaintiff also filed a grievance

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[3] Neither party has provided a transcript or written order from the bankruptcy proceedings, but I take judicial notice of the fact that an order denying plaintiff's objection to Wyngaard & Wilson's claim was entered on September 25, 1989 in bankruptcy case number MM7-88-01717, in the Bankruptcy Court for the Western District of Wisconsin.

[4] The date and outcome of the Board of Professional Responsibility's investigation have not been provided. However, I infer from plaintiff's continued attempts to relitigate this issue that the outcome was unfavorable to him.

[5] Plaintiff attached a copy of this complaint to his Preliminary Pretrial Statement, but it is unclear what date the complaint was filed, although the date that plaintiff signed the

with the Board of Attorneys Professional Responsibility of the Wisconsin Supreme Court regarding the alleged disloyal representation.[6]

On January 7, 1991, plaintiff filed the complaint in this action against Transworld Corporation, TW holdings (allegedly a successor to Transworld Corporation), SWT Division of Conistan Partners, Century 21 and Metropolitan Life. In his complaint plaintiff alleged that TransWorld Corporation violated federal securities law when it offered a prospectus that omitted the material fact that Century 21 was involved in litigation with plaintiff over the use of its trade name, and this omission prevented shareholders and prospective purchasers from making an educated investment decision regarding the sale of Century 21 to Metropolitan Life. Plaintiff alleged also that his First Amendment rights were violated when he was not permitted to speak at the shareholder's meeting; that the state court proceedings initiated by Century 21 were frivolous, infected with unfairness and the cause of his bankruptcy; that Century 21's continued infringement of the Century 21 trademark disparaged plaintiff's business; that Transworld and Metropolitan Life abused their corporate powers; and that the law firm Wyngaard & Wilson failed to provide loyal representation because it failed to disclose that it represented Century 21 affiliates while simultaneously representing plaintiff in his litigation with Century 21.

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complaint is January 30, 1991. No further information has been provided regarding the current status of this case.

[6] I am unable to determine the outcome of this investigation from the record.

In an order dated April 11, 1991, I dismissed plaintiff's complaint against defendants Transworld Corporation, TW Holdings and SWT Division of Conistan Partners for plaintiff's failure to state a claim for which relief may be granted. In another order dated June 19, 1991, I established August 1, 1991 as the deadline for serving and filing amendments to the pleadings. That order required a party to attempt to obtain permission from opposing parties before filing a proposed amendment, and required any proposed amendment to be accompanied by a motion for leave to amend along with a statement that the party has been unable to obtain the opposing party's consent.

On or about July 15, 1991, defendants informed plaintiff that they would not consent to plaintiff's proposed addition of Michael J. Wyngaard and Judge Robert Pekowsky as defendants. On August 7, 1991, plaintiff filed a motion to add Judge Pekowsky and Michael Ash, an lawyer at Wyngaard & Wilson, as defendants, and on August 9, 1991, plaintiff filed a motion titled "New Evidence for the Court and Request for Injunctive Relief by Plaintiff."

OPINION

Defendants oppose plaintiff's motions to amend his complaint on the ground that they are untimely. However, the technical rules of civil procedure are relaxed for pro se plaintiffs, and it does not appear that defendants will be prejudiced by my consideration of plaintiff's motions, despite their untimeliness and lack of conformity to civil procedure requirements. Because defendants also oppose the amendments on the same grounds as they oppose the original complaint, I will consider defendant's motion for summary judgment as directed to all of plaintiff's claims, amended and original.

Federal Securities Law

Plaintiff contends that Transworld Corporation colluded with Metropolitan Life to violate federal securities law by offering a prospectus that omitted the material fact that Century 21 was involved in litigation with plaintiff over the use of its trade name. In the April 11, 1991 order I dismissed this claim against Transworld, TW Holdings and SWT Division because plaintiff did not buy the security and therefore did not have standing to maintain an action under §12(2) of the Securities Act of 1933, 15 U.S.C. §77(l)(2). Furthermore, even if plaintiff had bought a security, his claim would be barred by the one-year statute of limitations, 15 U.S.C. §77(m), and plaintiff's broad allegations of collusion between Transworld and Metropolitan Life were "too vague to establish the basis for any claim that these defendants violated any particular right of plaintiff, or violated a particular law that resulted in harm to plaintiff."

For these same reasons I will dismiss this action against the remaining defendants. Plaintiff has not refined his allegations, and even if he had alleged collusion with sufficient specificity, plaintiff's claim would fail because he lacks standing and the statute of limitations bars his claim.

First Amendment Rights

Plaintiff contends that his First Amendment rights were abridged when he was prevented from speaking at the shareholder meeting in New York concerning the sale of Century 21 to Metropolitan Life. As I explained in the April 11, 1991 order, the United States Constitution limits governmental action, not private action. See Spencer v. Lee, 864 F.2d 1376, 1378 (7th Cir. 1989), cert. denied, 110 S.Ct. 1317 (1990). Not only does plaintiff fail to allege any governmental participation,

he also fails to allege that Century 21 or Metropolitan Life were involved in preventing plaintiff from speaking at the meeting. Therefore, this claim will be dismissed for plaintiff's failure to state a claim under Fed. R. Civ. P. 12(b)(6).

Abuse of Corporate Power

Plaintiff contends that Transworld Corporation's conduct at the shareholder meeting constituted an abuse of power warranting the revocation of its corporate charter under the laws of Delaware. In the April 11 order I dismissed this claim because plaintiff failed to allege any facts that would explain how any such abuse affected or injured his interests. Furthermore, this court has no power to grant plaintiff relief because Delaware law specifies that any proceedings to revoke a corporate charter must be taken by the Delaware General Attorney.

Plaintiff makes no allegations regarding this claim against Century 21, and only vague allegations that Metropolitan Life was involved in Transworld's alleged abuse of corporate power. As discussed above, these allegations are too vague to state a claim, and even if they were sufficiently specific plaintiff has no federal claim because federal court is not the proper forum for revoking a corporate charter granted by the State of Delaware. Therefore this claim is dismissed for plaintiff's failure to state a claim under Fed. R. Civ. P. 12(b)(6).

Relief from State Judgments

Distilled to their essential nature, plaintiff's claims all arise from his disagreement with the state court rulings prohibiting him from using the Century 21 trade name. He attacks the rulings on the grounds that the lawsuits instigated against him were frivolous; the rulings adverse to him were incorrectly decided; and that Michael Ash, a lawyer at the law

firm of Wyngaard & Wilson who represented plaintiff during the second jury trial also represented A-K Realty, a Century 21 franchisee, which precluded Ash from vigorously and objectively representing plaintiff. Plaintiff contends that the protracted and frivolous litigation initiated by Century 21 has disparaged plaintiff's business and driven him to bankruptcy.

As I stated in the order dated April 11, 1991, federal district courts do not have authority to review the outcome of claims brought and decided in state court, even when the plaintiff characterizes his claim as a new injury or one of constitutional dimensions. See, e.g., Jentges v. Milwaukee County Circuit Court, 733 F.2d 1238, 1244 (7th Cir. 1984)(federal court will not set aside conviction in guise of due process review simply because it might disagree with the state court's interpretation of state law)(citing United States ex rel. Burnett v. People of the State of Illinois, 619 F.2d 668, 671 (7th Cir.), cert. denied, 449 U.S. 880 (1980); Hale v. Harney, 786 F.2d 688, 691 (5th Cir. 1986)(litigant challenging trial court's ruling in divorce case cannot style suit as civil rights claim to obtain review in federal court if "in essence" court is being asked to review state decision); see also the Order and Opinion entered herein on April 11, 1991, at page 12.

Plaintiff does not allege a constitutional infirmity in the state court proceedings; rather, his primary complaint is that he disagrees with the state's decision. This court cannot "modify, review or annul the orders and judgments" of state courts. Town of Hopkins v. Cobb, 466 F. Supp. 1212, 1214 (D.S.C. 1979). The proper avenue for obtaining such review is through the appellate courts of the state. Id. at 1214 (citing Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923)). Plaintiff's claims against Century 21 and Metropolitan Life are essentially only an attempt to relitigate the issue of who owns the Century 21 trademark, an issue already fully explored in state court.

Furthermore, plaintiff's claim that Century 21's litigation was frivolous is meritless because Century 21 prevailed in protracted state court proceedings. Even if Century 21's state claim was frivolous, the proper avenue for redress was in the state court proceedings regarding the Century 21 trade name. Wis. Stat. §814.025 (providing for the award of costs for frivolous actions at any time during the proceedings). Similarly, any claims of business disparagement arising from Century 21's use of the trade name should have been raised in the state proceedings litigating the issue of who may use the trade name in Wisconsin.

Even if this court could review the state court decision, plaintiff would not be entitled to a new trial on the ground that his attorney refused to disclose a conflict of interest, because each party is "deemed bound by the acts of his lawyer-agent. . . ." Links v. Wabash R.R., 370 U.S. 626, 633-34 (1962); Village of Big Bend v. Anderson, 103 Wis.2d 403, 406, 308 N.W.2d 887, 889 (Wis. Ct. App. 1981). Plaintiff's recourse is a suit for malpractice, such as the one he is pursuing in state court.

In addition to a new trial, plaintiff seeks to set aside Wilson & Wyngaard's mortgage on plaintiff's property because of the alleged conflict of interest. This claim was rejected by the bankruptcy court, and if plaintiff desired to appeal that decision, he must have filed a notice of appeal within 10 days of the entry of the final order. Bankruptcy Rule 8002 (a); In re Souza, 795 F.2d 855 (9th Cir. 1986)(10-day filing period strictly construed). Nothing in the record suggests that plaintiff has filed a notice of appeal. Plaintiff cannot now seek to appeal the order over two years after its entry.

Injunction

In his "Acknowledgment & Admonishment" plaintiff alleges that Century 21 has been "loitering" on and in the premises of the Ivy Inn to distribute Century 21 advertising. Plaintiff requests that Century 21 be enjoined from this activity and in return he offers to cease advertising the "Century 21 (of WI) in the office area of either Mr. Zaslav or Mr. Decker."[7] Because pro se plaintiffs are to be treated liberally, I will construe plaintiff's request as a motion for preliminary injunction.

Plaintiff does not allege that the distribution of advertisements has violated any legal right of his, a necessary prerequisite to seeking an injunction. Palmer v. City of Chicago, 755 F.2d 560, 573 (7th Cir. 1985)(plaintiff must allege sufficient harm to have standing to seek injunction). It has already been determined in lengthy state proceedings that plaintiff has no rights to the Century 21 trade name, so plaintiff cannot claim the injury of trademark infringement. Another possible injury might be that of trespass, but any trespass would injure the Ivy Inn, not plaintiff. If any person or entity has standing to seek an injunction, it would be the Ivy Inn, not plaintiff. Because no right of plaintiff is being violated, plaintiff's motion for an injunction will be dismissed for lack of standing. Even if plaintiff did have standing it is unlikely that an injunction would be granted because plaintiff has failed to show a likelihood of success on the merits of his claim, an impending irreparable injury resulting from the distribution, or the absence of an adequate remedy at law. Cox v. City of Chicago, 868 F.2d 217, 219 (7th Cir. 1989).

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[7] Mr. Decker is the attorney of record for defendants, but Mr. Zaslav's relationship to this dispute is unclear.

Because all of plaintiff's claims will be dismissed for failure to state a claim, lack of jurisdiction, or lack of standing, and because the claims asserted against Judge Pekowsky and Michael Wyngaard have no merit, I will deny plaintiff's motion to amend the complaint to add these two defendants. This disposition of the case makes it unnecessary to address defendants' argument that plaintiff lacks standing to assert the claims set forth in his complaint because he failed to list them as assets in his bankruptcy schedule of assets.

ORDER

IT IS ORDERED THAT plaintiff's motion to amend his complaint is DENIED, defendants' motion for summary judgment is GRANTED, and plaintiff's motion for an injunction is DENIED. The Clerk of Court is directed to enter final judgment for all defendants.

Entered this 4th day of November, 1991.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge

JUDGMENT IN A CIVIL CASE

[Caption Omitted]

IT IS ORDERED AND ADJUDGED

That the motion to dismiss of defendants Trans World Corporation, TW Holdings, and SWT Division of Conistan Partnerners is GRANTED.

IT IS FURTHER ORDERED AND ADJUDGED that the plaintiff's motion to amend his complaint and plaintiff's motion for an injunction is DENIED.

IT IS FURTHER ORDERED AND ADJUDGED that defendants Century 21 and Meptropolitan Life's motion for summary judgment is GRANTED, and judgment is entered in favor of all defendants.

/s/ Joseph W. Skupniewitz November 5, 1991

Clerk

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604
Submitted April 14, 1993*

Decided April 30, 1993.

Before

Hon. WALTER J. CUMMINGS, Circuit Judge.

Hon. RICHARD D. CUDAHY, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

BRUCE B. MOHS,
Plaintiff-Appellant,

No. 92-1957 v.

TRANS WORLD CORPORATION, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Wisconsin

No. 91 C 26

Barbara B. Crabb,
Chief Judge.

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* After preliminary examination of the briefs, the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "Statement as to Need of Oral Argument." Fed. R. App. P. 34(a); Circuit Rule 34(f). Mohs has filed such a statement. Upon consideration of that statement, the briefs, and the record, the request for oral argument is denied and the appeal is submitted on the briefs and record.

ORDER

Bruce B. Mohs, entrepreneur and author of "The Amazing Mr. Mohs," brought this action pro se alleging violations of the First Amendment and of the federal securities and trademark laws stemming from prior state court litigation between Century 21 Real Estate Corporation and himself over the use in Wisconsin of the trade name, "Century 21." Jurisdiction was premised upon the existence of federal questions. 28 U.S.C. § 1331. The district court entered judgment for all the defendants, and this appeal followed.

Mohs' appellate brief, apart from its interesting recitation of the events in controversy here, is rather woefully inadequate. It fails to advance any legal argument regarding the propriety of the district court's decision, and it contains a dearth of citation to relevant authority. Fed. R. App. P. 28(a)(5); McCottrell v. EEOC, 726 F.2d 350, 351 (7th Cir. 1984); United States v. Brown, 899 F.2d 677, 679 n.1 (7th Cir. 1990); Pelfresne v. Village of Williams Bay, 917 F.2d 1017, 1023 (7th Cir. 1990). Our job is not to do Mohs' research for him. Pelfresne, 917 F.2d at 1023.

Notwithstanding Mohs' noncompliance with Rule 28(a)(5), we agree with the district court that Mohs failed to state a First Amendment claim, Air Wisconsin Pilots Protection Committee v. Sanderson, 909 F.2d 213, 218 (7th Cir. 1990), cert. denied, 111 S.Ct. 958 (1991); that Mohs had no standing under either § 12(2) of the Securities Act of 1933, Smolen v. Deloitte, Haskins & Sells, 921 F.2d 959, 965 (9th Cir. 1990); cf. Davidson v. Belcor, Inc., 933 F.2d 603, 605-06 (7th Cir. 1991), or Delaware law, Cleaver v. Roberts, 57 Del. 538, 544, 203 A.2d 63, 66 (1964); and that the district court lacked subject matter jurisdiction to review the Wisconsin state court rulings prohibiting Mohs from using the "Century 21" name, District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486

(1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923); Leaf v. Supreme Court, 979 F.2d 589, 596 (7th Cir. 1992). We therefore **AFFIRM** the decision of the district court for the reasons set forth in the attached Order.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

JUDGMENT - WITHOUT ORAL ARGUMENT

Date: April 30, 1993

BEFORE:

Honorable WALTER J. CUMMINGS, CIRCUIT JUDGE

Honorable RICHARD D. CUDAHY, Circuit Judge

Honorable DANIEL A. MANION, Circuit Judge

No. 92-1957

BRUCE B. MOHS,
Plaintiff - Appellant,

v.

TRANS WORLD CORPORATION,
TW HOLDINGS, SWT DIVISION
OF CONISTAN PARTNER, et al.,
Defendants - Appellees.

Appeal from the United States District Court for the Western District of Wisconsin

No. 91 C 26, Barbara B. Crabb, Chief Judge

This cause came before the court for decision on the record from the above mentioned District Court.

On consideration whereof, **IT IS ORDERED AND ADJUDGED** by this court that the judgment of the

District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered this date.

(1060-040593)
